

# EXECUTIVE ORDERS

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## OFFICE OF THE GOVERNOR Governor Christine Todd Whitman Executive Order No. 69(1997) Access to Certain Records

Issued: May 15, 1997.

Effective: May 15, 1997.

Expiration: Indefinite.

WHEREAS, Chapter 73, P.L. 1963, as amended, finds and declares it to be the public policy of this State that public records shall be readily accessible for examination by the citizens of this State for the protection of the public interest except as otherwise provided in said law; and

WHEREAS, some limitation upon the right to examine and copy records provided by Chapter 73 is essential and not detrimental to the public interest as recognized by existing statutory and common law; and

WHEREAS, disclosure of information must be consistent with existing statutory law regarding confidentiality in certain areas; and

WHEREAS, said Chapter 73 provides that records which would otherwise be deemed to be public records, subject to inspection and examination and available for copying, pursuant to the provisions of said law, may be excluded therefrom by Executive Order of the Governor or by any regulation promulgated under the authority of any Executive Order of the Governor; and

WHEREAS, Section 3(e) of Executive Order No. 9, issued by Governor Richard Hughes in 1963, and reaffirmed by Executive Order No. 123, issued by Governor Thomas H. Kean in 1983, states that fingerprint cards, plates and photographs and other similar criminal investigation records which are required to be made, maintained or kept by any State or local governmental agency shall not be deemed to be public records subject to inspection and examination and available for copying pursuant to the provisions of Chapter 73; and

WHEREAS, the Attorney General has undertaken a complete review of this subject area, seeking input from prosecutors, police, representatives of the news media, and victims' rights organizations, and has recommended that certain aspects of the system be clarified;

NOW, THEREFORE, I, Christine Todd Whitman, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby order and direct:

1. Executive Order No. 9 of Governor Richard J. Hughes and Executive Order No. 123 of Governor Thomas H. Kean are modified as hereinafter set forth, and any regulations adopted and promulgated under those prior Executive Orders shall be deemed null and void to the extent such regulations are inconsistent with the provisions of this Executive Order.

2. The following records shall not be deemed to be public records subject to inspection and examination and available for copying pursuant to the provisions of Chapter 73, P.L. 1963, as amended: fingerprint cards, plates and photographs and similar criminal investigation records that are required to be made, maintained or kept by any State or local governmental agency.

3. Notwithstanding the above section 2, the following information shall be available to the public within 24 hours, or sooner if practicable, of a request for such information:

(a) where a crime has been reported but no arrest yet made, information as to the type of crime, time, location and type of weapon, if any;

(b) if an arrest has been made, information as to the name, address and age of any victims, unless there has not been sufficient opportunity for notification of next of kin of any victims of injury and/or death to any such victim or where the release of the names of any victim would be contrary to existing law or court rule. In deciding on the release of information as to the identity of a victim, the safety of the victim and the victim's family, and the integrity of any ongoing investigation, shall be considered;

(c) if an arrest has been made, information as to the defendant's name, age, residence, occupation, marital status and similar background information and the identity of the complaining party, unless the release of such information is contrary to existing law or court rule;

(d) information as to the text of any charges, such as the complaint, accusation and indictment, unless sealed by the court or unless the release of such information is contrary to existing law or court rule;

(e) information as to the identity of the investigating and arresting personnel and agency and the length of the investigation;

(f) information of the circumstances immediately surrounding the arrest, including but not limited to the time and place of the arrest, resistance, if any, pursuit, possession and nature and use of weapons and ammunition by the suspect and by the police; and

(g) information as to circumstances surrounding bail, whether it was posted and amount thereof.

The term "request" shall mean either a written or oral request; provided, however, that all requests are made with sufficient clarity so as to enable a reasonable person to understand the information that is being sought. The law enforcement official responding to oral requests should make best efforts to respond orally over the telephone; however, it shall not be unreasonable to require the requester to appear in person to receive the information. Unless the parties note otherwise, it shall be understood that there is no duty to release or obtain information that is not in the possession of the law enforcement agency at the time of request.

4. Notwithstanding any other provision of this Executive Order, where it shall appear that the information requested or to be examined will jeopardize the safety of any person or jeopardize any investigation in progress or may be otherwise inappropriate to release, such information may be withheld. This section is intended to be narrowly construed to prevent disclosure of information which would be truly harmful to a bona fide law enforcement purpose or public safety if released. It is also intended to prevent such release that would violate existing law regarding confidentiality in areas including, but not limited to, domestic violence and juveniles.

5. Each county prosecutor shall prepare a plan outlining the procedures for providing and/or disseminating the information required by this Executive Order and shall submit same to the Division of Criminal Justice for its review and filing. Each prosecutor shall consult with the police departments within his or her county and to the extent possible, include within the prosecutor's plan the local procedures for responding to informational requests. The Division of State Police shall submit its plan to the Office of the Attorney General. Whenever any changes are made in any such plan, said changes shall immediately be forwarded to the appropriate county prosecutor and/or the Division of Criminal Justice or Office of the Attorney General for review and filing. In addition, each county prosecutor's office shall designate a person(s) who is (are) responsible for responding to requests for public information by the media on nights, weekends and holidays. The name of the person(s) so designated shall be available at the communication center in each county.

6. The Attorney General, as chief law enforcement officer of the State, or his designee, or where appropriate, the county prosecutor, as chief law enforcement officer of the county, shall promptly resolve all disputes as to whether or not the release of records would be "otherwise inappropriate" between the custodian of any records referred to herein and any person seeking access thereto or similar disputes. Where the Attorney General or the county prosecutor determines that the release of records would be "otherwise inappropriate," he or she shall issue a brief statement explaining the decision.

7. The terms of this Order shall be carried out in the spirit of Chapter 73, P.L. 1963, as amended, and shall not relate to requests pursuant to Chapter 60, Section 4, of P.L. 1994. It shall be carried out by keeping in mind the right of citizens to be aware of events occurring in their community.

8. This Order shall take effect immediately.